IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.1476 OF 2003

Ganesh Suresh Tikonkar : Petitioner

versus

State of Maharashtra & ors. : Respondents.

Mr.Peter Lobo for the petitioner.

Mr.V.B.Konde-Deshmukh, APP, for the State.

CORAM : D.G.DESHPANDE

V.K.TAHILRAMANI JJ.

DATED : MARCH 28, 2006.

P.C.

1. Heard advocate for the petitioner and learned APP for the State. Rule, returnable forthwith.

2. The petitioner has filed this petition for quashing the FIR bearing C.R.No.25 of 2001 registered by the sister of a girl who was allegedly kidnapped by the petitioner in 2001. Yogita - the respondent No.5 is the name of the said girl. It is the case of the petitioner that

the girl came with him of her own sweet-will and choice. They were married accordingly to Hindu rites and ceremony. The parents of the girl were also present. Thereafter the petitioner and girl started living together as husband and wife. They have got two issues from the said wedlock. At present they are living together. The FIR came to be lodged against the petitioner at the instance of sister of the girl-Yogita. Now along with this petition, the petitioner has filed the affidavits of his wife and the parents of the wife to the effect that there was no kidnapping, abduction and it was voluntary marriage. The original complainant - Kavita Mahadev Madalkar, who is respondent No.6, has also filed her affidavit. She is the sister of Yogita. In the circumstances the advocate for the petitioner prays for quashing the F.I.R.

3. The advocate appearing for the petitioner also relies upon the judgment of the Supreme Court reported in **(2000) 10 Supreme Court Cases 10 [Fazle Gaffar Khan and others v/s. State of W.B. and another]** wherein in the similar circumstances, the prosecution was quashed by the Supreme Court. We are reproducing paragraph No.3

of the said judgment :-

> "Para-3. The appellant faces criminal proceedings on a charge under Section 366 IPC on the allegation that he kidnapped a minor girl. On the basis of the first information report (FIR) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court under Section 482 CrPC for quashing of the proceedings. The High Court having refused to quash the proceedings, the present appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the appellant-accused. In view of such affidavit, the Court had issued notice pursuant to which the State entered appearance, but the complainant did not make any appearance. In the light of the said affidavit of the girl admitting the marriage between her and the present

appellant and the statement made by Ms.Indira Jaising, learned Senior Counsel appearing for the appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings. We, therefore, allow this appeal and direct that the criminal proceedings be quashed."

4. In view of these facts and circumstances and following the judgment of the Supreme Court, this petition has to be allowed and, therefore, we pass the following order :-

:ORDER:

Wit Petition is allowed in terms of prayer clause (a).

The FIR bearing CR No.25 of 2001 registered with Dongri Police Station, Mumbai is quashed.

Rule is made absolute.

Writ Petition is disposed of.

[D.G.DESHPANDE,J]

[V.K.TAHILRAMANI,J]